

Moreover, in order to ensure the enforceability of this attribution requirement, AFLAC believes that stations should be required to file copies of all LMAs and time brokerage agreements with the Commission -- or at least to place them in their public inspection files. In this way, members of the general public and other stations may function as "private attorneys general" and bring any perceived attribution issues or abuses to the attention of the Commission.

**C. IN ORDER TO DEAL WITH NEW TYPES OF INTERESTS AND UNANTICIPATED COMBINATIONS OF RECOGNIZED INTERESTS, THE COMMISSION SHOULD CREATE A NEW CATEGORY OF "DE FACTO" ATTRIBUTION.**

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Finally, in order to permit the Commission sufficient flexibility to deal with new types of ownership and other interests in broadcast stations, AFLAC suggests that the Commission specifically create a new category of "de facto" attributable interests. This would be analogous to the idea of "de facto" control and would permit the Commission on a case-by-case basis to conclude that a particular combination of interests which, individually might not confer the opportunity to exercise influence over a broadcast licensee, would in that instance and, accordingly, should be considered as attributable.<sup>5/</sup>

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<sup>5/</sup>Although the Commission arguably has that authority, it has displayed a notable reluctance to utilize it. See, e.g., BBC License Subsidiary L.P., at ¶¶ 42-43; compare the separate statement by Commissioner Ness: "In this case, considering the entire web of relationships, it stretches the imagination to believe that the potential for influence does not exist."

The need for such an a method of attribution analysis is well-illustrated by the Commission's recent decision conditionally approving the sale of WLUK-TV in Green Bay, Wisconsin. There, notwithstanding the presence of the various factors noted above (supra at 17 - 18), the Commission declined to rule that Fox has an attributable interest in Savoy Fox. As Commissioner Ness stated in her Separate Statement to that Decision, "And yet, anomalously, we are not finding attribution here, but would do so if the sole relationship were ownership of five percent of the licensee's voting stock!"

AFLAC agrees with Commissioner Ness that with these various interests, Fox plainly will have substantial influence over the licensee and station operation. The Commission's difficulty was that, individually, none of these interests would be considered to be attributable. Notwithstanding that fact, as Commissioner Ness wrote in her Separate Statement in the WLUK-TV proceeding, "we need to apply an awareness of business realities to the transactions we review." Thus, in such cases, the Commission must find a mechanism that will enable it to analyze and determine whether, in its own words, the cumulative impact of these various interests "convey[s] a realistic potential to affect [the] programming and other core operational decisions [of the licensee]." Notice in the Attribution Proceeding at ¶ 4.

Accordingly, AFLAC believes that such a mechanism lies in the Commission's articulation of a de facto attribution policy which would supplement the bright line attribution standards set forth in its rules. Such a policy would provide the Commission with the flexibility to address new and unanticipated situations on a case-by case basis, without the need to resort to complex and time consuming rulemaking proceedings. Specifically, in Commissioner Ness's words, it would permit the Commission to the ever changing "business realities" of the transactions that it reviews.

#### CONCLUSION

For the foregoing reasons, AFLAC submits that the Commission should make the following changes in its ownership and attribution rules: (1) retain the present 25% limit on national audience reach; (2) eliminate the single shareholder exemption to its attribution rules; (3) provide that television LMAs and time brokerage agreements will be attributable and require the filing with the Commission or in station public inspection files or such LMAs and time brokerage agreements; and (4) create a new category of "de facto" attribution to permit the Commission to rule that there is an attributable interest in a particular case, based upon the degree of influence exercised or potentially exercisable with respect to a broadcast licensee, even though the particular

factor or factors are not de jure attributable under the  
Commission's rules.

Respectfully submitted,

AFLAC BROADCAST GROUP, INC.

By: 

Craig J. Blakeley

POWELL, GOLDSTEIN, FRAZER & MURPHY  
1001 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004  
(202) 624-7347

Its Attorneys

May 17, 1995